

1 MORGAN, LEWIS & BOCKIUS LLP
 2 Nicole A. Diller (State Bar No. 154842)
 3 Donald P. Sullivan (State Bar No. 191080)
 4 Andrew C. Sullivan (State Bar. No. 226902)
 5 One Market, Spear Street Tower
 6 San Francisco, California 94105
 7 Telephone: (415) 442-1000
 8 Facsimile: (415) 442-1001

9 Attorneys for North Star Trust Company

10
 11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA

13
 14 THOMAS FERNANDEZ, LORA SMITH,
 15 and TOSHA THOMAS

16 Plaintiffs,

17 vs.

18 K-M INDUSTRIES HOLDING CO., INC.;
 19 K-M INDUSTRIES HOLDING CO., INC.
 20 ESOP PLAN COMMITTEE; WILLIAM
 21 E. AND DESIREE B. MOORE
 22 REVOCABLE TRUST; TRUSTEES OF
 23 THE WILLIAM E. AND DESIREE B.
 24 MOORE REVOCABLE TRUST;
 25 ADMINISTRATOR OF THE ESTATE OF
 26 WILLIAM E. MOORE, DECEASED; CIG
 27 ESOP PLAN COMMITTEE; and NORTH
 28 STAR TRUST COMPANY,

Defendants.

Case No. C06-07339 CW

**STIPULATION AND [PROPOSED]
 ORDER MODIFYING CASE
 MANAGEMENT SCHEDULING ORDER
 FOR REASSIGNED CIVIL CASE**

29 WHEREAS, this action was reassigned to this Court from the Honorable Martin J.
 30 Jenkins;

31 WHEREAS, this Court entered a Case Management Scheduling Order for Reassigned
 32 Civil Case (“Scheduling Order”) on March 5, 2008, modifying Judge Jenkins’s December 16,
 33 2007 Pre-Trial Order;

34 WHEREAS, the Scheduling Order set July 31, 2008, as the deadline for hearing motions
 35 for summary judgment on the issue of statute of limitations;

1 WHEREAS, Defendants filed their respective motions for summary judgment and noticed
 2 the hearings on those motions for July 31, 2008;

3 WHEREAS, on July 17, 2008, after the briefing on the Defendants' motions for summary
 4 judgment had been completed but before the motions were heard, the parties filed a Stipulation
 5 and [Proposed] Order continuing the hearing on Defendants' motions to September 11, 2008, so
 6 that the parties could participate in a private mediation on August 18, 2008;

7 WHEREAS, after the parties filed their Stipulation and [Proposed] Order continuing the
 8 hearing on the Defendants' motions, one of the parties essential to the mediation became
 9 unavailable for the scheduled mediation. The first day after August 18, 2008 on which the
 10 mediator, Mr. Tony Piazza, and all of the parties were available to participate in the mediation
 11 was September 12, 2008, the day *after* the stipulated hearing date on the Defendants' motions for
 12 summary judgment. The parties have reserved September 12, 2008, with Mr. Piazza;

13 WHEREAS, the parties continue to believe that mediation is likely to be more productive
 14 if it is conducted before the Court holds the hearing on Defendants' motions for summary
 15 judgment; and

16 WHEREAS, continuing the hearing date on the Defendants' motions to a date subsequent
 17 to the September 12, 2008 mediation necessarily impacts the other dates in the Scheduling Order,

18 NOW THEREFORE AND FOR GOOD CAUSE SHOWN, THE PARTIES HEREBY
 19 STIPULATE and AGREE as follows:

20 1. The hearing on Defendants' Motions for Summary Judgment shall be continued to
 21 October 23, 2008, at 2:00 p.m.;

22 2. Disclosure of experts and initial reports shall be completed by November 21, 2008;

23 3. Disclosure of rebuttal experts and reports shall be completed by December 12,
 24 2008;

25 4. Expert discovery shall be completed by January 16, 2009;

26 5. Last day for hearing dispositive motions shall be March 27, 2009;

27 ///

28 ///

1 6. The pre-trial conference shall be held on May 15, 2009; and
 2 7. The bench trial (15 days) shall commence on June 8, 2009.
 3

4 **IT IS SO STIPULATED:**

5 I, Donald P. Sullivan, attest, pursuant to General Order No. 45, Rule X, that the
 6 undersigned concur in the filing of this Stipulation.

7 DATED: August _____, 2008

LOVITT & HANNAN, INC.

8 By: /S/ Henry Bornstein

9 Henry Bornstein
 10 Attorneys for Defendants K-M Industries
 11 Holding Co., Inc.; K-M Industries Holding
 11 Co., Inc. ESOP Plan Committee; and CIG
 11 ESOP Plan Committee

12 DATED: August _____, 2008

HENNIGAN, BENNETT & DORMAN LLP

13 By: /S/ Allison Chock

14 Lauren Smith
 15 Allison Chock
 16 Attorneys for Defendants William E. and
 17 Desiree B. Moore Revocable Trust; Trustee
 17 of the William E. and Desiree B. Moore
 18 Revocable Trust; Desiree B. Moore
 18 Revocable Trust; William E. Moore Marital
 18 Trust; William E. Moore Generation-
 18 Skipping Trust; and Desiree Moore

19 DATED: August _____, 2008

MORGAN, LEWIS & BOCKIUS LLP

20 By: /S/ Donald P. Sullivan

21 Nicole A. Diller
 22 Donald P. Sullivan
 22 Attorneys for Defendant North Star Trust
 23 Company

24 DATED: August _____, 2008

LEWIS, FEINBERG, LEE, RENAKER &
 JACKSON, P.C.

25 By: /S/ Daniel M. Feinberg

26 Daniel M. Feinberg
 27 Todd Jackson
 27 Attorneys for Plaintiffs Thomas Fernandez,
 28 Lora Smith, and Toshia Thomas

[PROPOSED] ORDER

FOR GOOD CAUSE SHOWN, it is hereby ordered that the Court's March 5, 2008

Scheduling Order shall be amended as follows:

1. The hearing on Defendants' Motions for Summary Judgment on the issue of statute of limitations shall be continued to October 23, 2008, at 2:00 p.m.;
2. Disclosure of experts and initial reports shall be completed by November 21, 2008;
3. Disclosure of rebuttal experts and reports shall be completed by December 12, 2008;
4. Expert discovery shall be completed by January 16, 2009;
5. Last day for hearing dispositive motions shall be March 27, 2009;
6. The pre-trial conference shall be held on May 15, 2009; and
7. The bench trial (15 days) shall commence on June 8, 2009.

IT IS SO ORDERED.

DATED: _____

**The Honorable Claudia Wilken
United States District Judge**

DB2/20800807.2